

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1768

SPONSOR: Senator Smith

SUBJECT: Possession of Ammunition by Convicted Felons and Delinquents

DATE: March 9, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.			ACJ	
3.			AP	
4.				
5.				
6.				

I. Summary:

Senate Bill 1768 amends existing law which provides for a second degree felony where a convicted felon, violent career criminal, or juvenile delinquent are in possession of a firearm or electric weapon, to include possession of ammunition. The bill defines ammunition for purposes of ch 790, F.S.

This bill substantially amends the following sections of the Florida Statutes: 790.001, 790.23, 790.235, and 921.0022.

II. Present Situation:

Felons and delinquent juveniles are prohibited from being in possession, control, custody or having care of firearms or electric weapons. They are further prohibited from carrying a concealed weapon, including a tear gas gun or chemical weapon. When a felon has his or her civil rights and firearm authority restored, the prohibition no longer applies. The application of the law to juvenile delinquents ceases upon his or her 24th birthday. Violation of the statute is a second degree felony and is ranked in the Criminal Punishment Code as a Level 5 offense. s. 790.23, F.S., s. 921.0022(3)(e), F.S.

A person who meets the criteria of s. 775.084(1)(d), F.S., the Violent Career Criminal statute, regardless of whether they have been sentenced as such, can be charged with a first degree felony if they violate the provisions of s. 790.235, F.S. These provisions are the same as those set forth in s. 790.23, F.S. For purposes of this statute, a person's juvenile adjudications of delinquency count toward meeting the criteria. This particular violation carries a 15 year minimum mandatory sentence.

Section 790.001, F.S., contains the definitions of the terms used throughout ch. 790, F.S., including concealed weapon, tear gas gun or chemical weapon or device, firearm, and electric weapon or device. Ammunition is not defined in s. 790.001, F.S.

Law enforcement and prosecuting attorneys have reported a trend they are seeing more and more often, where a convicted felon or delinquent juvenile is found in possession of ammunition but no firearm. As they have aptly pointed out, it is beyond the officers' understanding why a person would have a need to be in possession of ammunition at all if they are prohibited by law from possessing a firearm. Following are a few of the examples cited by the North Miami Beach Police Department:

- Six members of a local gang were questioned as they stood across the street from the high school at dismissal. Pursuant to a consent search of a car belonging to one of the members, police recovered 400 rounds of ammunition, including .40 and .45 caliber and 9mm rounds; no firearms were recovered. All the subjects were either convicted felons or delinquent juveniles.
- Following the foot chase of a burglary/robbery suspect, two full magazines of .25 caliber bullets were recovered from the pockets of the suspect, who was on probation at the time; no firearm was recovered. It was believed, but could not be proven, that the subject "tossed it" as he fled.
- Police, responding to a "shots fired" call, searched a car at the scene. Inside the car, occupied by two suspects, both of whom were convicted felons or delinquent juveniles, were two fully loaded magazines (one magazine contained 9mm bullets and the other contained .45 bullets; no firearm was recovered).

The federal Gun Control Act of 1968, Public Law 90-618, was amended in 1994 to prohibit the receipt and possession of firearms by a person under certain restraining orders. *18 U.S.C. 925(g)(8)*. Violation of this law is punishable by up to 10 years in prison. Federal law allows an exception for law enforcement officers. *18 U.S.C. 925(a)(1)*. In 1997 Congress enacted the Omnibus Consolidated Appropriations Act of 1997. One part of the Act amended the Gun Control Act of 1968 to make it unlawful for any person convicted of a misdemeanor crime of domestic violence to possess firearms or *ammunition*.

Section 790.233, F.S., was created in 1998 by the Legislature with the intent that "the disabilities regarding possession of firearms *and ammunition* are consistent with federal law." s. 790.233(3), F.S. (emphasis added). Subsection (1), therefore, created prohibition against a person having in their care, custody, possession or control any firearm or ammunition if they have been issued a final injunction restraining that person from committing acts of domestic violence. It is a first degree misdemeanor to violate the prohibition. s. 790.233, F.S.

III. Effect of Proposed Changes:

Senate Bill 1768 defines ammunition and includes possession of it by a convicted felon, violent career criminal, or juvenile delinquent as second degree felony crime in s. 790.23, F.S. Possession of a firearm, or electric weapon or device, or carrying a concealed weapon including a tear gas gun or chemical weapon is currently prohibited in s. 790.23, F.S., and constitutes a second degree felony, Level 5 in the Criminal Punishment Code Offense Ranking Chart.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference considered this bill on March 5, 2004, and estimated that the prison bed impact resulting from the bill would be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.